

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1433 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

A R H SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR AM BUKHARI for Petitioner

MR ST MEHTA, Ld. AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 08/12/2000

ORAL JUDGEMENT

The appellant filed a suit being Civil Suit No. 2101/1983 in the City Civil Court, at Ahmedabad for a declaration that he deemed to be absorbed as regular Police Sub Inspector with effect from 1.1.1964 and for a direction to the respondents-defendants to treat him as regular Police Sub Inspector with effect from 1.1.1964 and to fix his pay and other allowances with effect from 17.8.1963 to 3.2.1980 as Police Sub Inspector and with effect from 4.2.1980 as Police Inspector with all allowances and benefits, and also for a declaration that an order of extending the appellant's probation period for one year at a stretch from 18.6.1970 to 17.6.1971 being nullity and the same is of no legal consequence to

him and for fixing his seniority in between the seniority of Police Sub Inspector at Sr. nos. 221 and 220 and a deemed date of promotion be fixed just above one Shri P.B. Shukla, and consequently accord him promotion in the cadre of Dy. S.P. with deemed date.

The learned City Civil Judge, in the said suit, recorded following findings in favour of the appellant.

- 1) The appellant is deemed to have been absorbed as regular Police Sub Inspector with effect from 1.1.1964.
- 2) The appellant is entitled to have a fixation of pay.
- 3) The Order No. EST/5058/1975 dated 11.4.1975 is nullity and of no legal consequences.
- 4) The appellant to stand in his seniority just above that of Shri P.B. Shukla.

In spite of recording the above findings in favour of the appellant, the learned City Civil Judge by his impugned judgment and order dated 4.4.1985 dismissed the suit on the ground that the suit is barred by limitation. The appellant has challenged the said judgment and order in the present appeal.

During the pendency of the appeal, the appellant made a representation to the State Government. It appears that the Home Department by passing an order dated 24.12.1985 confirmed the appellant in the cadre of Police Sub Inspector with effect from 1.7.1965. It further appears that the Home Department again by passing an order dated 18.3.1987 gave confirmation to the appellant with effect from 1.1.1964. In view of the aforesaid two orders passed by the State Government, the appellant has again made a representation for consequential benefits. The State Government by an order dated 5.6.1991 turned down the representation for consequential benefits. The appellant has, by way of Civil Application No. 4044/92 challenged the said order in the present proceedings. On 6.2.1992, this Court (Coram: K.G. Shah, J.) ordered to place this application alongwith the First Appeal by passing following order:

"To be placed along with the First Appeal which would be taken up for final hearing by this Court on 14th October, 1992."

In spite of the above order, the appeal is not heard for all these years.

When the appeal is called out for final hearing today, Mr. Bukhari learned counsel appearing for the appellant, after inviting my attention to the order dated 5.6.91 passed by the Home Department, challenged the legality and propriety of the said order. In my opinion, Mr. Bukhari is not justified in raising the said contention in the present appeal. Even though the trial court recorded certain findings in favour of the appellant and, in pursuance to the same, the State Government passed two orders in favour of the appellant, however, rejected the claim of monetary benefits, the fact remains that the suit was dismissed on the ground that it is barred by limitation. Mr. Bukhari learned advocate has frankly conceded that it is not possible for him to overcome the said finding. Thus, unless and until the finding of suit being time barred is set aside and consequently, the appeal is allowed, this Court while exercising appellate powers under sec. 96 of the Code of Civil Procedure cannot decide the subsequent orders passed by the State Government on the representations of the appellant. The appellant could have challenged the subsequent orders passed by the State Government by filing a petition under Article 226 of the Constitution of India. Mr. Bukhari submitted that he did not file the petition as this Court fixed final hearing of appeal on 14.10.1992. Be that it may, the appellant can still challenge the said order passed by the State Government if he so desires. In view of the above, I uphold the finding that the suit is time barred and therefore, the appeal fails.

Subject to the observations made above, this First Appeal is dismissed. There shall be no order as to costs.

Civil Application No. 4044/1992 is disposed of accordingly with no order as to costs.

(K. R. VYAS, J.)
mandora/